IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

SOFRE L. ALEXANDER, *Appellant.*

vs.

BERERINO CROLLOTT, Justice of the Peace of Precinct No. 13 of the County of Bernalillo and Territory of New Mexico.

No. 118.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

BRIEF OF APPELLEE.

I.

If the motion to dismiss the appeal in the above entitled cause should be overruled, the appellee asks the Court to consider this brief upon the merits of the appeal.

The question raised by the record is whether the filing of an affidavit before the justice of the peace

alleging that title was involved, deprived him of jurisdiction. If it acquired jurisdiction of the cause by the pleadings filed, alleging the necessary facts as required by the statute, then the justice of the peace was authorized to determine the existence of every fact necessary to the conferring of the jurisdiction upon him. If he erroneously determined them, the only remedy which the defendants had would be by appeal.

The appellant has set out on pages 10, 11, 12 and 13 of his brief the statutes of New Mexico relating to proceedings in the nature of forcible entry and detainer before a justice of the peace, and it is not necessary to reprint the statutes here.

The record in this case shows that every essential fact required by the statute was alleged by the plaintiff in the sworn complaints filed before the justice of the peace in each of the five suits brought. *See Transcript, pp. 5, 6, 7, 8 and 9.*

Having obtained jurisdition of the cause the judgment of the justice of the peace determining that no question of title was involved can only be reviewed by appeal.

Harris vs. Barber, 119 U. S. 366.

See especially,

Arnold vs. Shields, 30 Am. Dec. 686; 5 Dana 18.

There it was held that the justice of the peace had the right to determine the constitutionality of a statute vesting him with jurisdiction; and that a writ of prohibition would not lie.

See also the cases cited in the note.

In a summary proceeding in ejectment before a justice of the peace it is the province of the court to determine whether the title to land is in controversy.

Parker vs. Allen, 84 N. C. 466.

In proceedings by a landlord to recover possession of the demised premises, under the act of April 3, 1830, the defendant's affidavit that the title to land will come in question, will not oust the jurisdiction of the justice. That fact must be proved like any other fact in the case.

Essler vs. Johnson, 25 Pa. 350.

The filing of an affidavit that title to realty will come in question does not oust the justice of jurisdiction in proceedings under the Landlord and Tenant act of 1863; the act being complete in itself and not providing for such ouster by affidavit. The tenant's remedy is by appeal.

Livingood vs. Moyer, 2 Woodw. Dec. (Pa.) 65.

In forcible entry and detainer the defendant is precluded from setting up that the plaintiff's title is not such as he has set forth in his complaint.

Drake vs. Newton, 23 N. J. L. 111.

When Colorado was a territory it was held, that an action of unlawful detainer against a tenant is not defeated by a question of title, but the effect is only to remove the cause to another court.

Klopfer vs. Keeler, 1 Colo. 412.

And if the justice of the peace refused to certify the case and send it to the District Court under the statute, the appellant should have taken steps to cause this to be done, or if he erroneously decided

the case, resorted to an appeal.

By filing an affidavit asserting that title is involved, the justice of the peace is not deprived of jurisdiction. This is not the test of the justice's jurisdiction under the statute, though if it appear on the trial that title is involved, the justice will be without jurisdiction.

Cox vs. Graham, 3 La. 347.

And it does not appear what the evidence on the trial showed as to the justice's jurisdiction.

II.

The writ of prohibition is not an appropriate remedy in a court of merely appellate jurisdiction, in as much as the revisory power of such court can give adequate relief without a resort to a proceeding of that character.

Sussein vs. Hammond, 57 Ky. (18 B. Mun.) 672.

See also,

State ex rel Sinnot vs. Falls, 32 La. Ann. 553.

Hirsch vs. Judge 19th Judicial District, 39 La. Ann. 97; 1 Southern 281.

If a writ of prohibition could issue, it could have issued from the District Court.

Planters Ins. Co. vs. Cramer, 47 Miss. 200.

We respectfully submit that the judgment of the court below should be sustained.

Attorney for Appellee.